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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,460	03/11/2004	Erica Louise Evans	CM2731	6115

27752 7590 06/11/2007  
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EXAMINER
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YU, GINA C

ART UNIT	PAPER NUMBER
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1617

MAIL DATE	DELIVERY MODE
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06/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/798,460	Applicant(s) EVANS ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-18 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Receipt is acknowledged of amendment filed on April 3, 2007. Claims 1-5 and 7-18 are pending. Claim rejection made under 35 U.S.C. § 112, second paragraph, as indicated in the Office action dated January 7, 2007, is withdrawn in view of applicants' remarks. Claim rejection made under 35 U.S.C. § 103 (a) as indicated in the same Office action is maintained for the reasons of the record.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-5, 7-15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda et al. (US 2002/0041889 A1) in view of Oblong et al. (US 6217888 B1).**

Masuda et al. teach a topical preparation comprising 6 % of 1,3-butylene glycol, 4 % of glycerine, DL-serine, and N,N,N-trimethylglycine (a zwitterionic moisturizing factor). See Preparation Example 3; instant claims 1, 7, 12, and 13. The preparation example contains 0.1 % by weight of DL-serine, which is within the claimed limitation of instant claim 5. See also Example 10 and 11. The reference teaches the thickening agents of instant claims 10 and 11, which include polyacrylamide, polyacrylate, and sodium polyacrylate. See [0044]. Example 6 illustrates a toilet water formulation comprising 0.2 % of a thickening agent, methylcellulose. See instant claim 9. The reference also teaches making compositions in the form of emulsion, lotion or cream. See [0054], Examples. Example 8 teaches a cleansing foam comprising 10 % of

glycerine, which meets the glycerine weight limitation of instant claims 1 (a), 12 (a), and 18.

In claims 13, 14(a), 12, with respect to weight limitations on glycerine, there appears to be no criticality in modifying the weight amount of the glycol as required by the present claims. As discussed above, the reference teaches formulations which contain both 4 % glycerine and 6% 1,3-butylene glycol, as well as a formulation which contains 10 % of glycerine alone. Since glycerine and 1,3-butylene glycol are art-recognized functional equivalents that are added or substituted in place of the other, it is viewed that a skilled artisan would have discovered an optimum weight amount of these glycols to render desired humectancy by routine experimentations.

Masuda et al. also teach using medicinal ingredients including vitamin B<sub>3</sub>, including benzyl nicotinate, nicotinamide, and dl-alpha-tocopheryl nicotinate. While Masuda et al. broadly teach making a cosmetic composition by combining the components of the presently claimed invention, the reference does not provide a specific motivation to select the vitamin B<sub>3</sub> compounds among the disclosed medicinal ingredients.

Oblong et al. teach that vitamin B<sub>3</sub> compound, particularly nicotinamide, is useful in regulating skin conditions such as the signs of skin aging and improving the skin texture. See col. 1, line 59 – col. 2, line 9; col. 3, line 17 – col. 4, line 44. The reference also teaches using nicotinic acid, tocopherol nicotinate, and inositol hexanicotinate, or mixtures thereof, in the most preferred amount of about 2-5 % by weight. See col. 4, line 44 – col. 6, line 57: instant claims 2, 3, and 12. The reference also teaches that

preferred carriers for the invention include oil-in-water emulsion and water-in-silicone emulsions. See col. 7, line 59 – col. 10, line 58. See instant claim 8. Oblong et al. also teach using humectants, such as glycerine, to up to 20 % by weight, meeting instant claim 15. See col. 18, lines 1-29.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to have modified the exemplified cosmetic compositions of Masuda et al. by incorporating to the compositions a vitamin B<sub>3</sub> compound as motivated by Oblong et al. because i) Masuda et al. teach adding vitamin B<sub>3</sub> compounds as a cosmetic additive; and ii) Oblong et al. teach that vitamin B<sub>3</sub> reduces the signs of skin aging and improves the skin texture. The skilled artisan would have had a reasonable expectation of successfully producing a stable and improved cosmetic composition for moisturizing and treating aging skin because both Masuda et al. and Oblong et al. compositions are directed to compatible formulations such as emulsions, cream, and lotion.

**Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda et al. and Oblong et al., as applied to claims 1-5, 7-15, 17, and 18 as above, and further in view of Cooke et al. (WO 92/19216).**

Masuda et al. and Oblong et al. do not specifically teach using glycerine to the weight amount as required by instant claim 16. Both references, however, teach to make various formulations including gel systems, which would have motivated the skilled artisan to look to a specific disclosure for enablement of making such formulations. See Masuda, [0055]; Oblong, col. 7, lines 16-27.

Cooke et al. teach an aqueous gel formulation for skin or hair care, which comprises 0.5-20 % by weight of glycerine, or 0.5-30 % by weight of a polyhydric alcohol humectant, along with the ingredients which form and stabilize the aqueous gel. See p. 2 and 6. The reference further teaches adding panthenol (vitamin B5) moisturizer and vitamin B complex. See p. 5, 2<sup>nd</sup> full par. The gel formulation is said to provide improved skin feel and skin care benefits, reduced tack and residue characteristics, visual clarity, moisturizing, rub-in and absorption characteristics. See abstract.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of the combined references by formulating the aqueous gel with high glycerine content, as motivated by Cooke et al., because (a) both Masuda et al. and Oblong et al. generally teach making skin care gel system and adding vitamin B to the compositions; and (b) Cooke teaches a specific formulation and enabling disclosure to make the aqueous gel. The skilled artisan would have had a reasonable expectation of successfully producing a stable aqueous gel with enhanced moisturizing and skin benefits.

#### ***Oath/Declaration***

Declaration filed on April 3, 2007 has been fully considered but does not place the pending claims in allowable condition.

Citing CRC Handbook of Chemistry and Physics, declarant states that glycerine has a greater hygroscopicity than 1,3-butylene glycol and is a more desirable moisturizer. This fact does not amount to an unexpected or surprising result of using

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glycerine over 1,3-butylene glycol. Glycerine and 1,3-butylene glycol are distinct compounds and differences in the degrees of their properties are expected. Examiner's statement that these two glycols are "art-recognized functional equivalent" merely means that they are known in cosmetic art for same purposes, but does not in any way suggest that a skilled artisan would have believed that the compounds would exhibit same properties.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-5 and 7-18 have been considered but are not persuasive in part.

Applicants' arguments with respect to the § 112, second paragraph rejection are deemed persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). It appears that applicants refer to specific examples and texts of the prior arts in attempt to point out that not all limitations are taught in a one single example or statement. In this case, the present rejections are made in view of the combined teachings of the references under 35 U.S.C. § 103 (a). A reasonable skilled artisan who's given the objective teachings of the prior arts would have been motivated to combine the claimed ingredients as presently claimed.

With respect to the obviousness of the weight amount of glycerine, applicants assert that, due to the differences in degree of the hygroscopicity of glycerine and 1,3-butylen glycol, these two glycols would not be interchangeable. Examiner respectfully points out that the rejection is based on the obviousness of discovering the optimal weight amount of these glycols. There still is no evidence in the record that greater than 7 % or 25 % of glycerine is critical in the invention. As discussed above in Declaration, it is obvious that these two glycols have different properties, and the skilled artisan would have easily discovered adequate amount that is required to produce desired humectancy by routine experimentations.

#### ***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

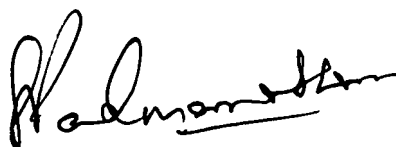
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu  
Patent Examiner



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER